

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

TOHO TENAX AMERICA, INC.,)	
)	
Plaintiff,)	
)	No. 3:12-CV-157
v.)	(VARLAN/GUYTON)
)	
LINDE, INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and Standing Order 13-02. Now before the Court is Defendant's Motion for Leave to File Supplemental Complaint [Doc. 28].

Plaintiff moves the Court to allow it to amend the Complaint to add events that have transpired since its first Amended Complaint was filed on June 26, 2012. Plaintiff has attached a copy of the proposed Supplemental Complaint for Declaratory Judgment [Doc. 28-1], to its motion.

The Court finds, first, that no party has responded in opposition to the Motion for Leave to File Supplemental Complaint, and the time for doing so has expired. See E.D. Tenn. L.R. 7.1(a), Fed. R. Civ. P. 6(d), 5(b)(2)(E). The Court may treat the lack of opposition during the time allowed under the rule as acquiescence to the relief sought. See E.D. Tenn. L.R. 7.2; see also Campbell v. McMinn County, 2012 WL 369090 (E.D. Tenn. 2012).

Second, the Court finds that the Plaintiff has made a sufficient showing to support affording leave to amend under Rule 15 of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 15(a) (“The court should freely give leave when justice so requires.”).

Finally, the Court finds that the Plaintiff has complied with Local Rule 15.1 in making its request.

The Court finds, however, that the Plaintiff has mislabeled its proposed amended complaint as a “Supplemental Complaint” rather than an “Amended Complaint.” It appears to the Court that the proposed pleading incorporates the Plaintiff’s pleadings in total. It is, therefore, not a supplemental complaint. Instead, it is an amended complaint, and to insure clarity of the record, it should be labeled as such. The Plaintiff will label the proposed complaint as “Amended,” not “Supplemental,” when it is filed in the record.

Based upon the foregoing, the Motion for Leave to File Supplemental Complaint [**Doc. 28**] is **GRANTED**. Plaintiff shall file its proposed, amended complaint [Doc. 28-1] in the record on or before **August 27, 2013**. When the proposed complaint is filed its substance shall remain the same, but it shall be labeled: “Second Amended Complaint for Declaratory Judgment.”

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge